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HOUSE BILL 3305 By
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SENATE BILL 3303
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 8; Title 9; Title 12;
Title 18; Title 34; Title 36; Title 37; and Title 71,
relative to child and spousal support.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-5-114, is amended by deleting the
section in its entirety and by substituting instead the following language:

36-5-114. Court clerks coordinating council; approval of waiver for
collections and disbursements; contracts for collection and disbursement of
support by clerks and others --(a)(1) There shall be created a court clerks child support
coordinating council, the purposes of which shall be:

(A) to study the impact of the provisions of Section 312 of Title III of
the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(42 U.S.C. 654B(a)(3)) as it affects the collection and disbursement of
child support by the clerks of court in order to determine the most
appropriate manner by which the clerks may continue their role in the
collection and disbursement of child support in compliance with 42 U.S.C.
654B and any implementing regulations, and;

(B) to propose solutions for the purposes of subdivision (1)(A) and to
implement any suitable arrangement for the continuance of such role as

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provided herein.

(b) The council shall consist of a juvenile court clerk, a clerk and master, and a circuit court clerk who are appointed by the president of the state court clerks conference; a representative of the Tennessee bankers association; a representative of the Tennessee association of business; the comptroller of the treasury or designee; the director of the administrative office of the courts, or designee; and the commissioner of the department of human services, or designee. The director of the administrative office of the courts shall serve as chair until the council elects another member as chair.

(c) All members of the council shall serve without compensation, but shall be reimbursed by the state court clerks conference for travel, meals and lodging at the same rates approved for state travel by the commissioner of finance and administration and approved by the attorney general and reporter.

(d)(1) The council may propose a plan for the continued involvement of the court clerks in the collection and disbursement of child and spousal support pursuant to the waiver provisions of 42 U.S.C. 654B.

(2) The waiver request, if approved by the commissioner of the department of human services, shall be submitted by the department of human services to the United States department of health and human services, by April 1, 1998 or such later date as permitted by the United States department of health and human services, but, in any event, no later than June 1, 1998.

(3) The waiver for operation of the centralized collection and disbursement unit operated by the state court clerks conference must be approved by the United States department of health and human services no later than August 1, 1998. If approved, the centralized collection and disbursement process which is to be operated by the state court clerks conference must be operational no later than, October 1, 1999, or such later

implementation date as may be permitted by the United States department of health and human services.

(4)(A) If the waiver is approved by the U.S. department of health and human services, the Tennessee department of human services will contract with the state court clerks conference which shall be the primary contractor, to establish, pursuant to 42 U.S.C. 654B and the waiver as approved by the United States department of health and human services, or as it may amended and approved by that department, a system of centralized collection and disbursement of child and spousal support which, to the maximum extent feasible, continues to involve the clerks of court in the collection and disbursement of child support, including the collection and disbursement of all Title IV-D child support payments, and for all non-Title IV-D cases in which the support order is initially issued on or after January 1, 1994 and which order is subject to income withholding, and to provide, as part of such system, one central location to which employers shall transmit income withheld for child or spousal support obligations.

(B) The state court clerks conference will remain the contractor to provide the services described in this section as long as it continues to meet Federal approval and complies with the terms of the contract.

(C) The president of the state court clerks conference, if approved by the conference's board of directors, shall have authority to bind the conference by contract with the department of human services, with any subcontractors, to the terms of this section and Federal law for the operation of the centralized collection and disbursement system.

(e)(1) The terms of any such contract or contracts or subcontracts for the operation of a central collection and disbursement system by the court clerks conference shall be approved by the department of human services, the commissioner of finance and administration, the comptroller of treasury, and the attorney general and reporter,

and shall require that the contractor and any subcontractor operate the collection and disbursement of child or spousal support under all applicable provisions of Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.) and its implementing regulations and pursuant to any requirements of state law or regulations relative to the collection or disbursement of support. The contract or any subcontract shall require that the contractor or the subcontractor provide all services associated with the collections and disbursement of the child or spousal support including, but not limited to, processing of all funds received, customer service, acceptance and processing of purge of contempt payments, and security for the protection of the funds

(2) If approved by the United States department of health and human services, the state clerks of court conference may, subject to approval of the department of human services, the commissioner of finance and administration, the comptroller of the treasury and the attorney general and reporter, subcontract with any persons or entities to provide any services necessary to carry out the functions required to implement the central collection and disbursement process.

(3) Notwithstanding the provisions of any law or regulation to the contrary, the contract by the department of human services with the state clerks of court conference, which is approved as described in subdivision (1), shall not be subject to bidding requirements established pursuant to law or regulation relative to bidding processes or procedures.

(4)(A) Clerks' fees permitted by statute for the collection of support may be apportioned among the clerks by the entity or entities which operate the system under the contract or subcontracts.

(B) A portion of the fees authorized by §8-21-403, shall be used by the state clerks conference to pay all costs associated with the performance of its duties under the contract with the department to operate the central collection and disbursement system.

(C) The processing of fees collected pursuant to § 8-21-403 or other provisions of this section, shall be conducted in such a manner as will not adversely affect compliance with Federal regulations or Federal funding for the Title IV-A block grant program and the Title IV-D child support program.

(f) Unless otherwise agreed to by the department of human services, the costs and all liability associated with developing, implementing, and operating the central collection and disbursement system and the central payment location, including, but not limited to any modifications to any computer systems operated by the court clerks or by the department of human services or any agency of the state, and all costs of conversion of data, shall be assumed by the state court clerks conference. Unless otherwise agreed by the department of human services, the state of Tennessee and its agencies, officers and employees shall have no liability under such contract.

(g)(1)(A) If the waiver involving the continuation of the clerks of court in a centralized collection and disbursement system of child and spousal support as set forth in this section is not submitted by April 1, 1998 for federal approval, or such later date as permitted by the U.S. department of health and human services, but in no event later than June 1, 1998; or,

(B) If the waiver request for operation of such system involving the continuation of the clerks of court in the centralized collection and disbursement system of child and spousal support is denied at any time; or,

(C) If approval for the operation of the system involving the clerks in the centralized collection and disbursement of child and spousal support is not received from the United States department of health and human services by August 1, 1998; or,

(D) If the contract for the operation of the central collection and disbursement system by the state court clerks conference and any subcontracts from the clerks

conference are not approved as required by subdivisions (e)(1)-(3) by October 1, 1998; or,

(E) If, at anytime after approval of the waiver which allows the clerks of court to continue in centralized collection and disbursement system of child and spousal support, the president of the state court clerks conferences notifies the commissioner of human services that the state court clerks conference is unable to proceed with or to complete the contract, or any necessary subcontract, for the operation of the centralized collection and disbursement system of child and spousal support, then, if any of the provisions of subdivisions (1)(A)-(1)(E) have occurred, notwithstanding any law to the contrary, the department of human services shall, effective October 1, 1999, be designated as the central collection and disbursement unit as provided by 42 U.S.C 654B for the collection of Title IV-D child and spousal support cases, and for all cases not being enforced pursuant to Title IV-D in which the support order is initially issued on or after January 1, 1994 and in which the income of the non-custodial parent is subject to income withholding as provided by law.

(2) If the contract with the state court clerks conference is terminated at anytime, the department of human services shall become the central collection and disbursement unit as required by 42 U.S.C 654B.

(3)(A) If any of the provisions of subdivisions (1)(A)-(1)(E) or (2) occur, the clerks of all courts which collect or disburse child or spousal support shall, at such time as the department requests, immediately begin to assist and cooperate with the department in transition to a central collection and disbursement system which is operated by the department of human services for all child and spousal support cases described in subdivision (1). Until such transition is complete, the clerks who have not completed the transition shall continue to collect and disburse support pursuant to law, and pursuant to agreements with the department of human services, existing

prior to the occurrence of such events; provided, however, if the provisions of subdivision (2) occur, the collection and disbursement of child and spousal support subject to the requirements of 42 U.S.C. 654B shall be conducted pursuant to the terms of the contract providing for such transition.

(B) If the department becomes the centralized collection and disbursement unit pursuant to Federal law or the provisions of this section, the department shall be authorized pursuant to state contracting procedures to enter into any other arrangements by contract, or to enter any interagency agreement or any combination, for the collection and disbursement of child and spousal support and the centralized location for the transmission of income withholding pursuant to the requirements of 42 U.S.C. 654B.

(4)(A) If the department of human services becomes the central collection and disbursement unit for any cases of child or spousal support, then, notwithstanding any law to the contrary, the fee paid by the obligor to the clerk for the collection of such support pursuant to § 8-21-403 shall be paid to the department of human services for each case in which the department assumes the responsibility of collection and disbursement for that case as provided pursuant to this subdivision.

(B) The fee shall be used to cover the costs of the operation of the central collection and disbursement system and for such other costs as may be necessary to reimburse the clerks of court pursuant to subdivision (4)(D) for the performance of their duties in supplying any information regarding support payments in non-Title IV-D cases which is necessary to process payments and to reimburse the clerks of court pursuant to § 36-5-115(e) for supplying any information necessary for inclusion in the state case registry pursuant to § 36-5-115 for non-Title IV-D support cases.

(C) The department may, notwithstanding any law to the contrary, by rules promulgated pursuant to the provisions of title 4, chapter 5, part 2, establish a fee to fund

the costs described in subdivision (4)(B). The rules shall provide that the fee shall be an amount to cover the actual costs of the operation of the central collection and disbursement system, but in no event shall the fee established by such rules exceed five percent (5%) of the support obligation.

(D) The fee to cover the costs necessary to reimburse the clerks of court for the performance of their duties in supplying any information regarding support orders in non-Title IV-D cases which is necessary to process payments pursuant to 42 U.S.C. 654B or to supply any information necessary for inclusion in the state case registry pursuant to § 36-5-115 for non-Title IV-D support cases shall be set according to the determination of the comptroller of the treasury pursuant to subdivision (6)(B) and § 36-5-115(d). The comptroller of the treasury shall review the costs for the clerks to provide the order information or state case registry information pursuant to 42 U.S.C 654A in non-Title IV-D cases on a biennial basis and shall report this to the department in order for the department to adjust the costs as described herein.

(5) Following implementation of the central collection and disbursement site, whether it is operated by the clerks or by the department or its contractors, each individual clerk shall remain responsible for receipt of all non-Title IV-D support payments not paid by income assignment, and shall remain responsible in all cases for receipt of any contempt purge payments or any other extraordinary, non-regular, support payments which must be receipted immediately as may be directed by the court. In such event, the payments received by the clerk shall be subject to any fees permitted by § 8-21-403 or such other fees as may be allowed by law. In addition, any such payments which are received in Title IV-D child or spousal support cases, shall be electronically forwarded by the clerk to the central collection site for overnight electronic batch processing.

(6)(A) Each clerk of the court shall submit to the department of human services in an automated format on a daily basis sufficient information as may be required by the department to permit, in accordance with federal requirements, the timely processing of all orders established or modified which are subject to income assignments in non-Title IV-D cases subject to the provisions of 42 U.S.C. 654B.

(B) If the clerks conference is unable to operate the centralized collection and disbursement unit pursuant to the federal waiver, the clerks shall be entitled to a reasonable fee, not to exceed the actual cost for transferring any information necessary to process support payments for any non-Title IV-D income assignments subject to this section. The comptroller of the treasury shall determine the actual costs required pursuant to this subdivision.

(C) For those clerks for whom computer equipment has not been provided by the department of human services as part of their duties in processing Title IV-D support case, the department shall conduct a computer needs assessment of the clerk's office and shall provide adequate computer equipment to permit transfer of any payment processing information for non-Title IV-D cases to the department's Tennessee Child Support Enforcement System (TCSSES). Clerks of court who operate an interfacing system with TCSSES and who do not wish to enter the necessary information on the TCSSES system shall be responsible for all costs associated with modifications necessary to enable the provision of such data as may be required to be entered to process payments for non-Title IV-D cases.

(h) All provisions which relate to the confidentiality of child support records pursuant to any provision of state or federal law or regulation shall apply to the records in the control and possession of the contractor or subcontractor providing any services pursuant to this section.

(i) The provisions of this section providing for the submission of a proposal by the clerks coordinating council of a plan as described in subsections (a)-(d) and the submission of a waiver by the department of human services for the operation by the court clerks conference of the centralized collection and disbursement system as required by 42 U.S.C. 654B shall have retrospective effect to January 1, 1998.

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 5, Part 1, is amended by adding the following as a new section:

36-5-115. State Registry of Support Cases.—(a) All cases of support for which services are being provided pursuant to Title IV-D of the Social Security Act, and all support orders which are established or modified on or after October 1, 1998, regardless of whether such orders result from cases being enforced pursuant to Title IV-D of the Social Security Act, shall be contained in an automated state registry of support cases and support orders to be operated by the department of human services under such conditions and containing such data elements as may be required by the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. 654A.

(b)(1) For all child support orders which are established or modified on or after October 1, 1998 which are not being enforced pursuant to Title IV-D of the Social Security Act, the clerks of each of the courts which maintain records of such support orders, shall enter into the Tennessee Child Support Enforcement System (TCSES) which is operated by the department of human services, or into any interface operated by the clerks with such system which interface is permitted by subsection (d), any data concerning such support orders as may be required by the department and which may be necessary to comply with the requirements of the secretary of the United States department of health and human services for the operation of the automated state case registry required by 42 U.S.C 654A.

(2) Any clerks of court who may have opted out of the statewide child support enforcement computer system pursuant to § 36-5-101(a) shall also enter any data into the automated state registry system as required pursuant to the provisions of this section.

(c) "Support order" for purposes of this section means an order in which there is, a judgment, decree, or order, whether temporary, final or subject to modification, which is issued by a court of competent jurisdiction or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the state which issued the order and which order, judgment or decree provides for the monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest, penalties, income withholding, attorneys fees and other relief.

(d) For those clerks for whom computer equipment has not been provided by the department of human services as part of their duties in processing Title IV-D support case, the department shall conduct a computer needs assessment of the clerk's office and shall provide adequate computer equipment to permit the transfer of any information required by this section to the department's Tennessee Child Support Enforcement System (TCSES). Clerks of court who operate an interfacing system with TCSES and who do not wish to enter information on the TCSES system shall be responsible for all costs associated with modifications necessary to enable the provision of such data as may be required to be entered in the state case registry.

(e) If the clerks conference is unable to operate the centralized collection and disbursement unit pursuant to the federal waiver, the clerks shall be entitled to reasonable fee, not to exceed the actual costs, for the transfer of any information regarding any non-Title IV-D case subject to 42 U.S.C. 654A which is necessary for

recording in the state case registry. The comptroller of the treasury shall determine the actual costs required pursuant to this section.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.